

CHAPTER NO. 354

SENATE BILL NO. 1380

By Person, Carter, Williams, Dixon

Substituted for: House Bill No. 1027

By Jackson, Bowers, Caldwell, Ferguson, Fitzhugh, Maddox, Sherry Jones, Brooks,
Ulysses Jones, Kernell, Langster, Pruitt, Brown, Brenda Turner

AN ACT To amend Tennessee Code Annotated, Title 39, Chapter 17, Part 15, relative to youth access to tobacco products.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 39-17-1504(c), is amended by placing a period after the word "park" and by deleting the remainder of that subsection.

SECTION 2. Tennessee Code Annotated, Section 39-17-1504(d), is amended by deleting the word and number "eighteen (18)" in the first sentence of that subsection and substituting in their place the word and number "twenty-seven (27)".

SECTION 3. Tennessee Code Annotated, Section 39-17-1503, is amended by adding the following items and renumbering the subsequent items accordingly:

(1) "Commissioner" means the Commissioner of Agriculture or the commissioner's duly authorized representative.

(2) "Department" means the Department of Agriculture.

SECTION 4. Tennessee Code Annotated, Section 39-17-1504, is amended by deleting subsections (e) through (h) in their entirety.

SECTION 5. Tennessee Code Annotated, Section 39-17-1505(a), is amended by inserting the words and punctuation "to possess a tobacco product," between the words "age" and "to".

SECTION 6. Tennessee Code Annotated, Section 39-17-1505(b), is amended by deleting that subsection in its entirety and substituting in its place the following language:

(b) Any person who violates this section shall be issued a citation by a law enforcement officer or school principal who has evidence of the violation. The citation shall require the person to appear in the Juvenile Court for the county in which the violation is alleged to have occurred. At the time of issuance of the citation, the tobacco product shall be seized as contraband by the law enforcement officer or school principal.

(c) A violation of this section shall be a civil offense, the penalty for which is a civil penalty of not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00). Upon its determination that the person has violated this section, the Juvenile Court shall determine the amount of the civil penalty and shall order the destruction of the tobacco product. The Juvenile Court may in its discretion also

impose community service work not to exceed fifty (50) hours for a second or subsequent violation within a one (1) year period.

(d) A minor who is cooperating with law enforcement officers in an operation designed to test the compliance of other persons with the provisions of this part shall not be subject to sanctions under this section.

(e) As used in this section, the term "law enforcement officer" means an officer, employee or agent of government who is authorized by law to investigate the commission or suspected commission of violations of Tennessee law.

SECTION 7. Tennessee Code Annotated, Section 39-17-1505, is amended by adding the following language as new, appropriately designated subsections:

() It is not unlawful for a person under eighteen (18) years of age to:

(1) handle or transport tobacco or tobacco products as a part of and in the course of such person's employment, provided that the person is under the supervision of another employee who is at least twenty-one (21) years of age; or

(2) to handle or transport tobacco as part of an educational project that has been developed by such person for entry and display at an agricultural fair or other agricultural competition or event.

() Nothing in this section shall be construed to prohibit a person under eighteen (18) years of age from handling or transporting tobacco as part of and in the course of such person's involvement in any aspect of the agricultural production or storage of tobacco, the sale of raw tobacco at market or the transportation of raw tobacco to a processing facility.

SECTION 8. Tennessee Code Annotated, Section 39-17-1506(b), is amended by deleting that subsection in its entirety and substituting in its place the following language:

(b) Unless another notice is required by federal law, the notice required by this section and the notice required by § 39-15-411 shall be the only notice regarding tobacco products required to be posted or maintained in any store that sells tobacco products at retail.

SECTION 9. Tennessee Code Annotated, Section 39-17-1507(b), is amended by deleting the word and number "eighteen (18)" and substituting in their place the word and number "twenty-seven (27)".

SECTION 10. Tennessee Code Annotated, Section 39-17-1507(c), is amended by deleting the subsection in its entirety.

SECTION 11. Tennessee Code Annotated, Section 39-17-1508(b), is amended by deleting that subsection in its entirety.

SECTION 12. Tennessee Code Annotated, Section 39-17-1509, is amended by deleting that section in its entirety and substituting in its place the following language:

Section 39-17-1509. Enforcement — Inspections — Reporting.

(a) The department shall enforce this part in a manner that may reasonably be expected to reduce the extent to which tobacco products are sold or distributed to persons under eighteen (18) years of age, and shall conduct random, unannounced inspections at locations where tobacco products are sold or distributed to ensure compliance with this part.

(b) A person who violates §§ 39-17-1504, 39-17-1506, 39-17-1507 or 39-17-1508 shall receive only a warning letter for the person's first violation and shall not receive a civil penalty for the person's first violation. A person who violates §§ 39-17-1504, 39-17-1506, 39-17-1507 or 39-17-1508 is subject to a civil penalty of not more than five hundred dollars (\$500) for the person's second violation, not more than one thousand dollars (\$1,000) for the person's third violation and not more than one thousand five hundred dollars (\$1,500) for the person's fourth or subsequent violation. For purposes of determining whether a violation is the person's first, second, third, fourth or subsequent violation, the commissioner shall count only those violations which occurred within the previous five (5) years. A civil penalty shall be assessed in the following manner:

(1) The commissioner shall issue the assessment of civil penalty against any person responsible for the violation;

(2) Any person against whom an assessment has been issued may secure a review of such assessment by filing with the commissioner a written petition setting forth the person's reasons for objection to the assessment and asking for a hearing before the commissioner;

(3) Any hearing before the commissioner shall be conducted in accordance with the Uniform Administrative Procedures Act, codified in Title 4, Chapter 5, Part 3. An appeal from the final order of the commissioner may be taken by the person to whom the assessment was issued, and the appeal proceedings shall be conducted in accordance with the judicial review provisions of the Uniform Administrative Procedures Act, codified at §§ 4-5-322 – 4-5-323;

(4) If a petition for review is not filed within thirty (30) days after the date the person received the assessment, the person shall be deemed to have consented to the assessment, and it shall become final. Whenever an assessment has become final, the commissioner may apply to the Davidson County Chancery Court for a judgment in the amount of the assessment and seek execution on such judgment. The Davidson County Chancery Court shall treat a person's failure to file a petition for review of an assessment as a confession of judgment in the amount of the assessment.

(c) A person who demanded, was shown, and reasonably relied upon proof of age shall not be liable for a civil penalty for a violation of § 39-17-1504 or § 39-17-1507. In the case of distribution of tobacco products by mail, a person who obtained a statement from the addressee that such addressee is at least eighteen (18) years old shall not be liable for a civil penalty so long as that distributor of tobacco products informed the addressee that Tennessee law prohibits the distribution of any tobacco products, as defined by this part, to a person under eighteen (18) years of age.

(d) When assessing a civil penalty, the commissioner is authorized to assess the penalty against any person or persons determined by the commissioner to be responsible, in whole or in part, for contributing to or causing

the violation to occur including, but not limited to, the owner, manager or employee of a store at which tobacco products are sold at retail, the owner, manager or employee of an establishment in which a vending machine selling tobacco products is located, and a company or any of its employees engaged in the business of sampling.

(e)(1) The owner or manager of a store which sells tobacco products at retail shall provide training to the store's employees concerning the provisions of this statute. As a part of this training, each employee shall, prior to selling tobacco products at retail, sign a statement containing substantially the following words:

"I understand that state law prohibits the sale of tobacco products to persons under eighteen (18) years of age and that state law requires me to obtain proof of age from a prospective purchaser of tobacco products who, based on appearance, might be as old as twenty-six (26) years of age. I promise to obey this law, and I understand that monetary or criminal penalties may be imposed on me if I violate this law."

(2) If the commissioner assesses a penalty against the store owner or manager, the owner or manager may present to the commissioner a copy of the statement described in subdivision (1) which was signed by the employee who made the sale to a minor, along with a sworn statement by the owner or manager that the employee had signed the statement prior to the sale to the minor, and the name and address of the employee who made the sale. If the owner or manager does not know which employee made the sale to the minor, the owner or manager may present to the commissioner copies of the statements described in subdivision (1) which were signed by all employees working at the store on the day the sale was made, along with a sworn statement that these employees had signed those statements prior to the sale to the minor.

(3) When the store owner or manager presents to the commissioner the statements described in subdivision (2):

(i) if the violation is the second violation determined to have occurred at that store, the penalty against the store owner or manager shall be eliminated; or

(ii) if the violation is the third or subsequent violation determined to have occurred at that store, the commissioner shall consider such evidence and any other evidence with respect to the amount of the penalty against the owner or manager.

(f) The department shall prepare annually for submission by the Governor to the Secretary of the United States Department of Health and Human Services the report required by Section 1926 of subpart I of Part B of Title XIX of the Public Health Service Act. The department shall prepare for submission to the General Assembly and the public an annual report describing in detail the department's enforcement efforts under this part.

SECTION 13. Tennessee Code Annotated, Title 39, Chapter 17, is amended by adding a new Section 39-17-1510, as follows:

Section 39-17-1510. Criminal Penalty.

A person who violates § 39-17-1504, § 39-17-1506, § 39-17-1507, or § 39-17-1508 commits a Class C misdemeanor.

SECTION 14. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 25, 1999


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 14th day of June 1999


DON SUNDQUIST, GOVERNOR